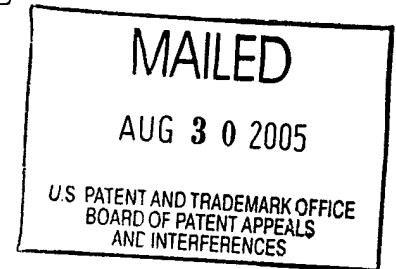


The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WOLFGANG KUSCHKE,
HARDIAL SINGH GILL and WILLIBALD KONRATH



Appeal No. 2005-1963
Application 09/095,397

ON BRIEF

Before PAK, WARREN and KRATZ, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

Decision on Appeal

This is an appeal under 35 U.S.C. § 134 from the decision of the examiner finally rejecting claims 1 through 8, which are all of the claims in the application.

Claim 1 illustrates appellants' invention of a screening housing for microwave circuits, and is representative of the claims on appeal:

1. A screening housing for microwave circuits comprising: a housing body having an interior, said housing body being open at least at one side thereof; a cover closing said interior of said housing; a substrate mounted on an inner side of said cover; and means forming a plurality of chambers provided for accommodating of individual circuit units so that said individual circuit units are screened from one another, said means including said substrate on said inner side of said cover, and a plurality of webs which are formed directly on said substrate so that when said cover closes said housing body said webs form separating walls between said chambers.

The references relied on by the examiner are:

Chung et al. (Chung)	5,827,997	Oct. 27, 1998 (filed Sep. 30, 1994)
Kaneshige et al. (Kaneshige)	5,876,223	Mar. 2, 1999 (filed Jul. 23, 1996)

The examiner has rejected appealed claims 1, 2, 5 and 6 under 35 U.S.C. § 102(e) as anticipated by Kaneshige (answer, page 4), and appealed claims 3, 4, 7 and 8 under 35 U.S.C. § 103(a) as unpatentable over Kaneshige in view of Chung (answer, pages 5-7).¹

Appellants state that “[c]laims 1 and 7 are separately patentable” and group the dependent claims with the respective independent claims (brief,² page 5). Thus, we decide this appeal based on appealed independent claims 1 and 7 as representative of the grounds of rejection and appellants’ grouping of claims. 37 CFR § 1.192(c)(7) (2003); *see also* 37 CFR § 41.37(c)(1)(vii) (September 2004).

We affirm.

Rather than reiterate the respective positions advanced by the examiner and appellants, we refer to the answer and to the brief for a complete exposition thereof.

Opinion

We have carefully reviewed the record on this appeal and based thereon find ourselves in agreement with the supported finding and conclusion advanced by the examiner that as a matter of fact, *prima facie*, the claimed screening housing for microwave circuits encompassed by appealed claim 1 is anticipated by Kaneshige, and as a matter of law, *prima facie*, the claimed screening housing for microwave circuits encompassed by appealed claim 7 would have been obvious over the combined teachings of Kaneshige and Chung to one of ordinary skill in this art at the time the claimed invention was made. Accordingly, we have again evaluated all of the evidence of anticipation and non-anticipation as well as all of the evidence of obviousness and nonobviousness based on the record as a whole, giving due consideration to the weight of appellants’ arguments in the brief. *See generally, In re Spada*, 911 F.2d 705, 707 n.3,

¹ The examiner’s objection to the specification in the answer (page 3) and appellants’ response thereto in the brief (pages 8-9) is a petitionable matter which is not before us on appeal. *See* Manual of Patent Examining Procedure §§ 706.01 and 1201 (8th ed., Rev. 2, May 2004).

² We consider the brief filed August 6, 2004.

15 USPQ2d 1655, 1657 n.3. (Fed. Cir. 1990); *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984).

The dispositive issue in this appeal is the interpretation to be made of the claim language “a plurality of webs which are formed directly on said substrate” in each of appealed claims 1 and 7. In interpreting this claim language, the claim terms must be given the broadest reasonable interpretation in their ordinary usage as they would be understood by one of ordinary skill in the art in light of the written description in the specification, including the drawings, as interpreted by this person, unless another meaning is intended by appellants as established in the written description of the specification, and without reading into the claims any limitation or particular embodiment disclosed in the specification. *See, e.g., In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997); *In re Zletz*, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). It seems to us that appellants are arguing that the subject language requires that each of the screening webs or walls must be formed as a whole unit in a single process step directly on the substrate, which interpretation precludes the formation on the substrate of a screening metal plated web or wall formed by the successive steps of forming a web or wall and then plating that web or wall as disclosed by Kaneshige (brief, page 7, first paragraph).

We cannot agree with appellants that the broadest reasonable interpretation of the subject language is that narrow. We note in this respect that appellants do not contend that the “means” language of claims 1 and 7 falls under 35 U.S.C. § 112, sixth paragraph, and we find in the claims sufficient structure provided by the webs or walls as well as by the substrate to identify the “means.” *See generally, Al-Site Corp. v. VSI Int’l, Inc.*, 174 F.3d 1308, 1318, 50 USPQ2d 1161, 1166 (Fed. Cir. 1999). We determine that one of ordinary skill in this art would find that in context, the claim language “formed directly on the substrate” means that the screening web or wall must be formed directly on the substrate without regard to the number of steps required to do so. We further determine that the substrate in claim 7 must be “composed of a polymer with embedded metal particles” and there is no limitation on the material forming the webs or walls directly on the substrate which thus can be formed from the same material.

In view of our interpretation of appealed claims 1 and 7, we agree with the examiner that the claimed screening housing for microwave circuits encompassed by claim 1 is anticipated by Kaneshige because the reference provides substantial evidence establishing that the shielded or screening webs or walls 13 are formed directly on shielded inside or screening substrate 12 as illustrated in Kaneshige FIG. 12 (e.g., col. 4, ll. 1-6). Thus, Kaneshige in fact describes a screening housing for microwave circuits that satisfies each and every limitation of the claimed invention encompassed by claim 1 arranged as required therein. *See In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); *Spada*, 911 F.2d at 707, 15 USPQ2d at 1657.

On this basis, we further agree with the examiner that the combined teachings of Kaneshige and Chung provide substantial evidence supporting the examiner's position that one of ordinary skill in the art routinely following these combined teachings would have arrived at the claimed screening housing for microwave circuits encompassed by appealed claim 7, including each and every limitation thereof arranged as required therein, without recourse to appellants' specification. *See In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988) ("The consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that [the claimed process] should be carried out and would have a reasonable likelihood of success viewed in light of the prior art. [Citations omitted] Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure."); *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981) ("The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.").

We are reinforced in our view by the examiner's finding that one of ordinary skill in this art following these combined teachings would have constructed the walls or webs not only in the manner disclosed by Kaneshige as we found above, but would have also constructed the walls in one step from the same polymer with embedded metal particles used for the substrate as

suggested by the combined teachings of the applied references (answer, pages 6-7). We note in this respect, that appellants have not addressed the combined teachings of Kaneshige and Chung, relying only on their arguments with respect to Kaneshige. *See Keller*, 642 F.2d at 426, 208 USPQ at 882.


Accordingly, we have again evaluated all of the evidence of anticipation and of obviousness found in the applied prior art with appellants' countervailing evidence of and argument for non-anticipation and nonobviousness, and based thereon we find and conclude that the claimed invention encompassed by appealed claims 1, 2, 5 and 6 would have been anticipated as a matter of fact under 35 U.S.C. § 102(b), and that the claimed invention encompassed by appealed claims 3, 4, 7 and 8 would have been obvious as a matter of law under 35 U.S.C. § 103(a).

The examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (September 2004).

AFFIRMED


CHUNG K. PAK
Administrative Patent Judge


CHARLES F. WARREN
Administrative Patent Judge


PETER F. KRATZ
Administrative Patent Judge

BOARD OF PATENT
APPEALS AND
INTERFERENCES

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Striker Striker & Stenby
103 East neck Road
Huntington, NY 11743